



**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rules and Regulations Implementing	)	CG Docket No. 02-278
the Telephone Consumer Protection	)	
Act of 1991	)	
	)	

**COMMENTS OF THE AMERICAN TELESERVICES ASSOCIATION**

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**AFFIDAVIT OF NANCY KORZENIEWSKI**

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I, NANCY KORZENIEWSKI, do hereby attest as follows:

1. I am over 18 years of age and am competent to provide this Affidavit. The statements contained in this Affidavit are based on my personal knowledge.
2. I reside at 245 Meadow Ridge Trail, Doylestown, Ohio 44230 and am employed in the teleservices industry.
3. I am a certified schoolteacher in Ohio and taught for seven years prior to entering the teleservices industry. After taking time off to raise my daughter, I was unable to return to teaching because I was overqualified. For the last nine years, I have worked for InfoCision Management Corporation, which is a privately owned

business that has operated for over 20 years. InfoCision currently operates 22 call centers in 3 states. At InfoCision I first served as an entry-level night shift supervisor of outbound call campaigns, then as a Call Center Manager. I currently hold the position of Director of Inbound Call Center Operations. My responsibilities as Director include overseeing our inbound and blended call center operations and ensuring that our calling campaigns are run efficiently.

4. InfoCision takes numerous steps, and expends tremendous resources, to ensure compliance with all state and federal laws and to preserve good customer relations. In order to abide by all applicable laws as they come into effect, InfoCision personally contacts all appropriate governmental agencies and obtains copies of their regulations and policies in writing. Furthermore, InfoCision has spent over \$25,000 during the past year alone obtaining do-not-call lists, which it electronically scrubs against all of its call lists. This is a burdensome process because all of the lists must be converted into a form readable by InfoCision's proprietary predictive dialing application. InfoCision additionally scrubs all of its call lists against its own company-specific do-not-call list, which contains 250,000 names, as well as those of its clients. InfoCision keeps meticulous do-not-call records for itself and all of its clients and updates them daily. InfoCision also electronically programs its dialers to prevent any calls that would violate the time of day restrictions of any state and shuts down its call campaigns five minutes before the start of any time of day restriction. Additionally, InfoCision representatives attend all compliance seminars, and InfoCision trains all of its employees to comply with all applicable laws and regulations. Furthermore, InfoCision

monitors the calls placed by its agents and uses software designed to prevent violations of applicable laws and regulations.

5. Because 90 percent of InfoCision's business is generated through outbound call campaigns, the creation of a national do-not-call regime will likely have a profoundly harmful effect on InfoCision's business. InfoCision already employs one manager and three staff assistants whose efforts are dedicated to compliance issues. InfoCision will have to expend additional human and financial resources to comply with a national list, which will certainly include increasing the size of its compliance staff. Additionally, InfoCision currently employs over 2000 agents, many of whom are college students, former welfare recipients, and single working mothers striving to make ends meet. These agents are paid hourly wages ranging from eight dollars to twenty-five dollars and can also earn performance-based bonuses. While InfoCision will do everything in its power to avoid laying off a single employee, a national do-not-call list may make lay-offs unavoidable.

6. A national do-not-call regime, which allows consumers to opt out of all telemarketing calls, will dramatically and negatively impact the viability of telemarketing as a legitimate means for businesses to contact potential customers. Current company-specific do-not-call regulations are perfectly effective and allow consumers to stop calls from the companies by whom they do not wish to be contacted. By presenting consumers with an all-or-nothing choice, a national do-not-call list will affect many more legitimate businesses than do the various company-specific do-not-call regulations combined because the desire not to hear from specific callers will lead consumers to opt entirely out of all calls from a diverse range of callers. Essentially, the





## **MARKET SURVEY OF CONSUMER ATTITUDES REGARDING TELEMARKETING**

In November 2002, ATA commissioned an independent market survey of American consumers to determine attitudes toward telemarketing in general, volume of calls received, acceptability of specific categories of callers, do-not-call requests, cell phone usage, and frequency of phone number changes.

The survey was conducted on November 8-10, 2002, by TeleNation, a service of Market Facts, the US division of the market research firm Synovate, part of the international communications specialist Aegis Group. Market Facts currently ranks as one of the world's top ten research firms. It provides services to many consumer packaged goods companies, as well as other sectors including automotive, financial, telecommunications, technology, pharmaceuticals, healthcare, business-to-business markets, governments, and associations. The survey methodology is described below:

### **TELENATION SURVEY METHODOLOGY**

#### **SAMPLE**

Each week TeleNation completes 3 national telephone surveys. Each survey consists of a minimum of 1,000 interviews with adults 18 years of age or older; 480 males and 520 females. TeleNation uses a single-stage, random digit-dial sample technique to select each sample from all available residential telephone numbers in the contiguous United States. This non-clustered approach insures true random selection among all telephone numbers and provides a truly independent sample for each wave. Up to three attempts are made on the selected telephone numbers.

#### **INTERVIEW**

TeleNation interviews are conducted over a 3-day period via Market Facts' CATI network in its National Telephone Centers. TeleNation employs AUTOQUEST®, Market Facts' computer assisted telephone interviewing system, to conduct telephone interviews. This CATI software insures consistent execution of the questionnaire and efficient sample management. The interview, itself, consists of non-competing client-specific questions and a shared set of standard demographic questions. TeleNation provides transitional phrases between survey segments to insure smooth interview flow.

## TABULATION

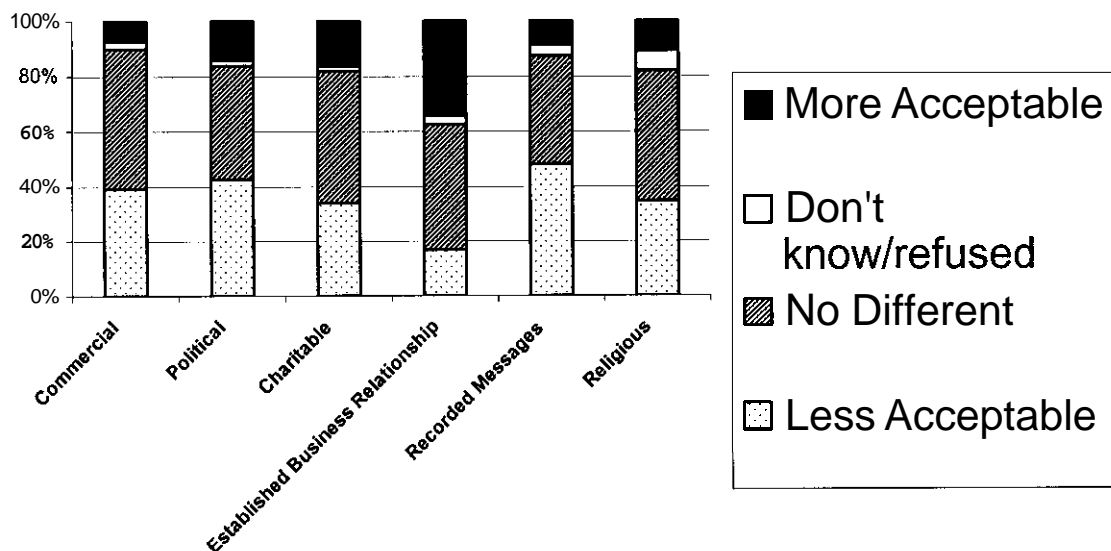
TeleNation survey results are tabulated by two standard demographic sets.

- A. Gender, Age, Income, Marital Status, Child In Household
- B. Region, Race, Education, Employment Status, Primary Grocery Shopper, Home Ownership, Internet Access

TeleNation's standard data tabulations are provided in a weighted format. The data are weighted on an individual multi-dimensional basis to give appropriate representation of the interaction between various demographic factors. The multi-dimensional array covers age within income, within the four National Census regions, within gender, resulting in 160 different cells. The current Population Survey from the U.S. Census Bureau is used to determine the weighting targets for each of these 160 cells. The margin of error for the study was 3.1%.

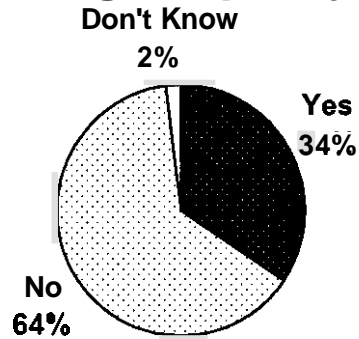
## RESULTS

### **Consumer acceptability ratings of different types of unsolicited calls**

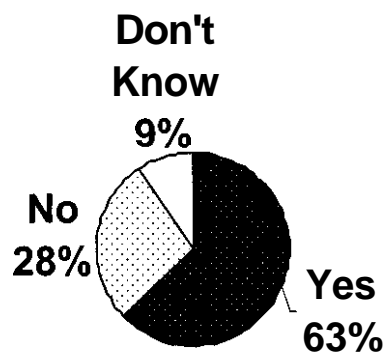




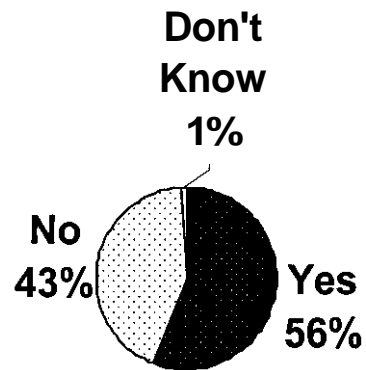
**Consumers who asked to be placed on  
any telemarketer's do not call list  
during the past year**



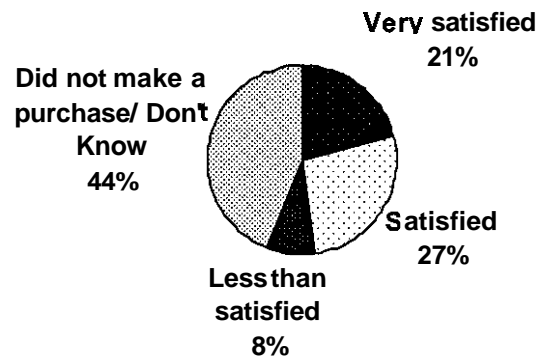
**Consumers who felt their DNC  
requests resulted in calls being  
stopped by the telemarketer**



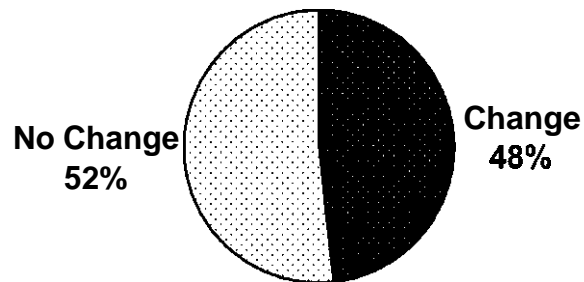
## Consumers who made a purchase by telephone in the last year



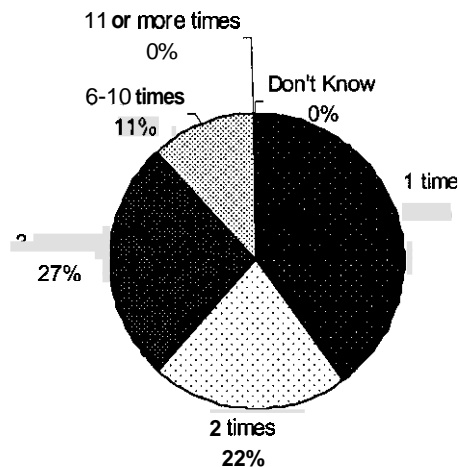
## Consumer level of satisfaction with purchases made by telephone



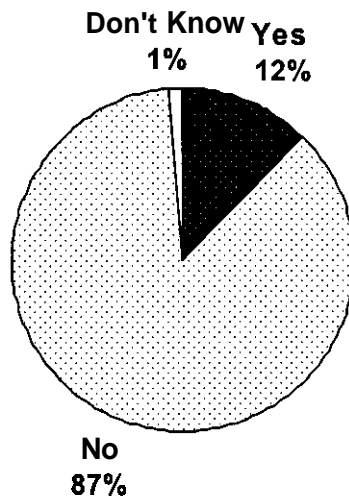
## Consumers who have changed their phone number in the past ten years



## Of consumers who change phone numbers, how many times



## Consumers who have received telemarketing calls on cell phones





**STATE DO-NOT-CALL LIST/TELEMARKETING COMPLIANCE SUMMARY**

State	Effective Date	Consumer Registration Fee and Renewal Period	List Purchase Price for Business	Frequency of List Updates	Penalty for Violations	Exemptions	No Rebuttal	Calling Hour Restrictions	Permission to Continue	Registration and Bonding
Alabama	07/01/00	0110 years	500 / year	Quarterly	Not to exceed 2,000 per violation	Very extensive list of exemptions. See <a href="http://www.psc.state.al.us/nocall/No-Call%20Web%20info1.htm">http://www.psc.state.al.us/nocall/No-Call%20Web%20info1.htm</a>		8am to 6pm No holidays No Sundays		Yes \$500 / year Filing fee  Post a \$50,000 bond
Alaska 1988	11/1/96	Varies	50 / year	Annual	Varies	<ul style="list-style-type: none"> <li>Calls in response to customer inquiries</li> <li>Calls by a charitable organization or public agency and their volunteers</li> <li>Calls to express ideas, opinions, or solicit votes</li> <li>Business-to-business calls</li> <li>Existing business relationships</li> </ul>		8am to 6pm		Yes \$0
Arkansas 19,310	01/01/00	15 / year	\$0	Quarterly	Not to exceed \$500 per violation	<ul style="list-style-type: none"> <li>Calls made with the recipient's written permission</li> <li>Existing business relationships (within the past 36 months)</li> <li>Calls regarding an outstanding debt or obligation</li> <li>Calls by motor vehicle dealers, insurance agents, real estate agents, funeral establishments or from licensed investment brokers to sell their goods and services</li> <li>Calls by volunteers for a charitable organization</li> <li>Calls seeking newspaper subscription or advertising</li> </ul> <p>Calls by banks promoting banking services (not direct office calls)</p>	YES	8am to 6pm		Yes \$100 / year Filing Fee  Post a \$100,000 bond

	01/01/03	TBD	TBD	TBD	<p>Not to exceed \$500 for first violation</p> <p>Not to exceed \$1000 for every subsequent violation</p>	<ul style="list-style-type: none"> <li>▪ Calls in response to an express request</li> <li>▪ Calls regarding an outstanding debt or obligation</li> <li>▪ Calls that the subscriber specifically excepts from the no-call list</li> <li>▪ Established business relationships</li> <li>▪ Calls by individual business persons or small businesses with less than 5 employees to sell goods/services (but only within 50 sq. mile radius)</li> <li>▪ Calls to verify a terminated business relationship</li> <li>▪ Calls by tax-exempt charitable organizations</li> </ul>		8am to 9pm		<p>Yes</p> <p>\$50/year Filing Fee</p> <p>Post a \$100,000 Bond</p>
Co 70'	6/10/02	\$0/ OPEN ENDED	<p>\$0 if less than 5 employees</p> <p>\$500 (max) if more than 1,000 employees</p>	Quarterly	<p>Not to exceed \$2,000</p> <p>Or</p> <p>\$10,000 if you are 60 or older</p>	<ul style="list-style-type: none"> <li>▪ Calls made with the recipient's prior written invitation or permission</li> <li>▪ Established business relationship</li> <li>▪ Calls made in response to customer inquiries regarding potential sales of goods or services within 30 days or until the customer objects, whichever occurs first</li> <li>▪ Calls by certain charitable organizations</li> <li>▪ Calls to support a political candidate or ballot issue</li> <li>▪ Calls to conduct political polls or to solicit opinions, ideas or votes</li> </ul>		8am to 9pm		<p>Yes</p> <p>\$200/year</p> <p>\$100 renewal Filing Fee</p>

	01/01/01	\$0/ The renewal period for all DMA TPS users is 5 years	\$781 / year		Penalties include cease and desist orders, fines of up to \$5,000 per willful violation, court injunctions and penalties up to \$25,000 for violations of those injunctions.	<ul style="list-style-type: none"> <li>■ Calls made with recipient's prior express written or verbal permission</li> <li>■ Calls in response to a consumer's visit to an establishment with a fixed location</li> <li>■ Calls regarding an existing debt or contract that has not been paid or performed</li> <li>■ Calls to an existing customer</li> <li>■ Calls from a business that first began to do business in Connecticut on or after January 1, 2001, and has operated in Connecticut for less than one year</li> <li>■ Calls made for a non-commercial purpose, such as a poll or survey</li> <li>■ Calls by a tax-exempt, non-profit organization</li> <li>■ Calls by telephone companies compiling their own directories</li> </ul>	9am to 9pm			Yes \$1,500/year Filing Fee  Post a \$50,000 Bond
	07/01/90	\$10 / initial \$5 / renewal Per year	\$400 / year	Quarterly	Not to exceed \$10,000	<ul style="list-style-type: none"> <li>■ Calls in response to consumer request</li> <li>■ Calls regarding an existing debt, contract, payment or performance</li> <li>■ Calls to sell newspaper subscriptions</li> <li>■ Calls by newspaper publishers, agents or employees</li> <li>■ Existing or previous business relationship</li> <li>■ Political calls</li> <li>■ Calls on behalf of and to solicit donations for a charitable organization</li> </ul>	8am to 9pm			



	01/01/99	\$5/ 2 years	\$10 / year	Quarterly	Not to exceed \$2,000	<ul style="list-style-type: none"> <li>Current or prior business relationship</li> <li>Calls by companies that have recipient's prior express invitation or permission to call</li> <li>Calls by political candidates or polling companies</li> <li>Calls by recognized charities or religious organizations</li> </ul>	Yes	8am to 9pm	Yes \$150/year \$25 renewal
	05/01/01	\$10 / Initial lasts 3 years \$5 / renew every 3 years	\$25 / quarter	Quarterly	Not to exceed \$500 for First violation  Not to exceed \$2500 for Second violation  Not to exceed \$5000 for Third violation	<ul style="list-style-type: none"> <li>Current or prior business relationship</li> <li>Certain business presentations</li> <li>Calls by businesses licensed by the federal government or Idaho governmental agencies</li> <li>Calls to sell newspaper subscriptions or sell advertisements in a newspaper or telephone directory</li> <li>Calls to sell magazines and other periodicals (on certain conditions)</li> <li>Calls by a business that has at least one business location in Idaho and purchasers obtain 90% of goods or services sold from that location</li> <li>Calls by certain issuers of securities or their subsidiaries</li> <li>Calls that solicit sales through recognized catalogs</li> </ul>	Yes	8am to 9pm	

Illinois	1/01/03	TBD	TBD		TBD	<ul style="list-style-type: none"> <li>■ Calls made with subscriber's permission</li> <li>■ Callers and subscribers who have an existing business relationship</li> <li>■ Calls from certain tax exempt organizations</li> <li>■ Certain calls from licensed real estate or insurance agents</li> <li>■ Until 7-1-05 calls from certain telecommunications carriers</li> </ul>	Yes	Yes	
Indiana 1,188,948	01/01/02	\$0/ OPEN ENDED	\$300 / year		<p>Not to exceed \$10,000 for the First violation,</p> <p>Not to exceed \$25,000 for the Second violation</p>	<ul style="list-style-type: none"> <li>■ Calls in response to the recipient's express request</li> <li>■ Calls made regarding an existing debt or contract</li> <li>■ Calls by charitable organizations who use volunteers or employees to make the calls and immediately disclose:               <ol style="list-style-type: none"> <li>1. the caller's true first and last name, and</li> <li>2. the name, address and phone number of the organization;</li> </ol> </li> <li>■ Calls by employees or volunteers on behalf of a newspaper</li> <li>■ Calls by state-licensed insurance agents soliciting an application for insurance or negotiating an insurance policy</li> <li>■ Calls by state-licensed realtors if:               <ol style="list-style-type: none"> <li>1. the sale of goods or services is not completed, and</li> <li>2. the payment or authorization of payment is not required until after a face-to-face sales presentation by the seller</li> </ol> </li> </ul> <p>Calls by accredited colleges or universities</p>			Ye \$5 Fill

Kansas	11/01/02		\$359 via e-mail \$399 via CD-Rom	Quarterly	Not exceed \$10,000 per violation	<p>Calls in response to the recipient's express request</p> <p>Calls regarding an existing debt or contract that has not yet been completed</p> <p>Established business relationship within 36 months without objection</p> <ul style="list-style-type: none"> <li>■ Calls by organizations soliciting for charitable donations</li> <li>■ Calls concerning political candidates or issues</li> <li>■ Calls related to the sale of property or services</li> </ul>	Yes	8am to 9pm	Yes	
Kentucky 707.632	07/15/02		\$0	Quarterly	Not to exceed \$5,000 per violation	<ul style="list-style-type: none"> <li>■ Calls by tax exempt charitable organizations</li> <li>■ Calls by real estate brokers and sales associates that do not promote or sell recreational or retirement use land or timeshares</li> <li>■ Calls by schools soliciting magazines and other periodicals</li> <li>■ Calls by merchants and telemarketers regulated by the public service commission</li> <li>■ Calls by Kentucky merchants or telemarketers calling out of state</li> <li>■ Calls by FCC-regulated cable companies subject to franchise provisions</li> </ul>	Yes	10am to 9pm	Yes	<p>Ye</p> <p>\$3<sup>1</sup></p> <p>\$5<sup>1</sup></p> <p>Po</p> <p>\$5<sup>1</sup></p> <p>Bo</p>

Louisiana 271,467	07/15/02	\$ 5 MRS			Not to exceed \$3,000 per violation for residential telephonic subscribers over the age of sixty-five and not to exceed \$1,500 for all other residential telephonic	<ul style="list-style-type: none"><li>■ Calls in response to recipient's express request</li><li>■ Calls regarding an existing debt or contract that has not yet been completed</li><li>■ Existing business relationship within 6 months of call</li><li>■ Calls by non-profit status organizations (unless professional paid solicitor used)</li><li>■ Calls made for marketing research, public opinion polling, other activities that do not involve selling</li><li>■ Political calls to solicit ideas, opinions or votes</li><li>■ Calls made by a newspaper or qualified periodical</li></ul>	<ul style="list-style-type: none"><li>■ Calls by tax-exempt, non-profit organizations</li><li>■ Calls by charitable organizations</li><li>■ Calls by non-commercial polling or political organizations</li><li>• Established business relationship</li></ul>	<ul style="list-style-type: none"><li>■ Calls by non-profit organizations</li><li>■ Calls by political organizations</li><li>■ Prior business relationship</li><li>■ Calls by businesses that do not intend to complete the sale on the phone</li></ul>	8am to 8pm No Holid No Sund		Yes \$150/ year Filing Fee  Post a \$50,000 Bond
Maine 18,630	01/14/00	\$0 The renewal period for all DMA TPS users is 5 years			Not to exceed \$500 per violation						Yes \$25/ year Filing Fee  Post a \$10,000 Bond
Massachusetts	01/01/03	\$0			TBD	TBD			8am to 8pm		
Minnesota	01/01/03	\$0/ 4 years			Not exceed \$1000 per violation				9am to 9pm		

Missouri 354,336	07/01/01	0/ OPEN ENDED	\$25 / area code / quarter \$600 / year whole state	Quarterly	Not to exceed \$5,000 per violation	<ul style="list-style-type: none"> <li>• Sales calls that require face-to-face presentation by seller</li> <li>• Sales calls where customer can return goods within 14 days</li> <li>• Qualified customer-initiated calls <ul style="list-style-type: none"> <li>▪ Calls with the recipient's express invitation or permission</li> </ul> </li> <li>• Established business relationship</li> <li>• Calls by certain state or federally regulated agencies</li> <li>• Business calls that do not involve selling nondurable office and cleaning supplies</li> </ul>		8am to 3pm		
New York 2,330,479	05/01/01	10 / 1 years	\$500 / year	Quarterly	Not to exceed \$5,000 per violation	<ul style="list-style-type: none"> <li>• Calls with recipient's express permission</li> <li>• Calls by charitable organizations</li> <li>• Calls by religious corporations</li> <li>• Calls by political parties and committees</li> <li>• prior business relationship</li> <li>• Calls by telemarketers that arrange a face-to-face meeting</li> </ul>		8am to 3pm		Yes \$500/ year Filing Fee  Post a \$25,000 Bond
Oklahoma	01/01/03	10/ 2 years	\$150/ quarter \$600/ year	Quarterly	TBD	(Effective January 1, 2003) <ul style="list-style-type: none"> <li>• Calls by politicians</li> <li>• Calls by charities</li> <li>• Calls by religious organizations</li> <li>• Calls by nonprofit organizations</li> </ul>		8am to 9pm		Yes \$250/ year \$100 renewal  Post a \$50,000 Bond

Oregon \$8,899	11/01/00	\$6.95 / 1 <sup>st</sup> year \$3 / year renewal	\$120 / year	Quarterly	Not to exceed \$25,000 per violation	<ul style="list-style-type: none"> <li>• Calls with recipient's express permission</li> <li>• Calls by a public agency or charitable organization</li> <li>• Calls to conduct a political poll or an opinion survey</li> <li>• Preexisting business relationship</li> <li>• Calls by a predecessor or a business enterprise for certain financial institutions</li> <li>• Business to business contact calls</li> </ul>	es	am to pm	Yes	es 4001 year Billing Fee
Pennsylvania	11/01/03	10 The renewal period for all DMA TPS users is 5 years	\$781 / year		Not to exceed \$1,000, or \$3,000 if the person contacted is age 60 or older.	<ul style="list-style-type: none"> <li>• Established business relationship</li> <li>• Calls with recipient's express permission or request</li> <li>• Calls regarding an existing debt, contract, payment performance</li> <li>• Calls by or for a 501(c)(3) organization</li> <li>• Calls for a veteran's organization</li> </ul> <p>Calls for political candidate or political party</p>	es	am to pm		es 500/ year Billing Fee  Post a 50,000 bond
Tennessee 760.292	11/01/00	\$0/ 5 years	\$500 / year	Monthly	Not to exceed \$2,000 per violation	<ul style="list-style-type: none"> <li>• Calls with the recipient's permission or by invitation</li> <li>• Calls by or for non-profit organizations (provided that an employee or member of the organization is making the call)</li> <li>• Existing business relationship</li> <li>• Occasional telemarketing calls if:               <ol style="list-style-type: none"> <li>1) three random telemarketing calls less per calendar week. and</li> <li>2) call is not part of a telemarketing business plan</li> </ol> </li> </ul>		am to pm		

Texas 665,691	07/01/02	State List \$2.25 / 3 years Electric Utility List \$2.55/ 5 years Both Lists Renewal \$2.40/ 5 years	\$45 / quarter	Quarterly	Not to exceed \$1000 per violation	<ul style="list-style-type: none"> <li>Established or recently terminated business relationship</li> <li>Business to business calls</li> <li>Calls in response to customer request</li> <li>Calls to collect a debt</li> <li>Calls by state licensee (e.g., insurance or real estate agent) and:               <ol style="list-style-type: none"> <li>the call is not made by an automated device</li> <li>the solicited transaction is not completed without a face-to-face presentation to complete a sales transaction and make payment</li> <li>the consumer has not previously told the licensee that the consumer does not wish to be called</li> </ol> </li> </ul>	9am to 9pm  12 noon to 9pm Sundays	Yes \$200/ year Filing Fee  Post a \$10,000 bond
Vermont 27,937	07/08/02	\$0 The renewal period for all DMA TPS users is 5 years	\$781/ year		Not to exceed \$500 for the first violation and Not to exceed \$1000 per every subsequent violation.		8am to 9pm	

Wisconsin	01/01/03	\$0/ 2 years	\$700 if reg. F and \$500/ year ti after  \$75 for every used i registri		Not to exceed \$100 per violation	<ul style="list-style-type: none"> <li>• Calls seeking charity donations if the call encourages purchase of property, goods or services from a "nonprofit organization"</li> <li>• Calls made by an individual acting on his or her own behalf, and not as an employee or agent for any other person, but not if the caller: <ol style="list-style-type: none"> <li>1. Sells or promotes the sale of property, goods or services for others.</li> <li>2. Sells or promotes the sale of goods that the caller buys from another person who controls or limits the caller's sales methods.</li> </ol> </li> <li>▪ Calls in response to a customer request</li> <li>▪ Existing business relationships</li> <li>▪ Calls to a local business listed in the local business telephone directory</li> <li>▪ Calls to confirm contractual obligations</li> <li>▪ Customer service calls</li> </ul>		8am to 9pm	
Wyoming 5,982	07/01/01	\$0 The renewal period for all DMA users is years			<p>Not to exceed \$500 for first violation</p> <p>Not to exceed \$2500 for second violation</p> <p>Not to exceed \$5000 for every other subsequent violation</p>	<ul style="list-style-type: none"> <li>▪ Established business relationship</li> <li>▪ Calls in response to customer's express request</li> <li>• Calls regarding existing debt or contract, payment or performance that has not been completed</li> <li>• Calls by telephone solicitors or merchants that make less than 225 unsolicited calls a year</li> </ul>		8am to 9pm	





### Telecommunication Services To Control Telemarketing

<b>Service</b>	<b>Method of Operation</b>	<b>Cost to Consumer*</b>
Call Rejection Service	A consumer with existing Caller ID Service may opt to reject any incoming call from an anonymous location or from a blocked number (Anonymous Call Rejection) or to reject any incoming call from a limited set of previously identified numbers (Selective Call Rejection). The Anonymous Call Rejection service allows callers to temporarily unblock their name and number to get through to the consumer.	Anonymous Call Rejection is generally included free-of-charge with Caller ID Service.  Selective Call Rejection is approximately \$4.50 per month with a one-time installation fee of \$8.50.
Caller ID Service	The consumer is provided with the name and number of incoming callers. Caller ID also stores the caller's name, number, date and time of call. For consumers with Enhanced Caller ID with Privacy + or Privacy Manager, incoming calls marked "private" or "unavailable" receive a pre-recorded message that asks the caller to identify themselves by recording their name.	Caller ID Services vary from approximately \$6.95-\$9.95 per month with a one-time installation fee of \$8.50.
No Solicitation Service	Before the phone rings in the consumer's residence, incoming callers are greeted with an announcement asking solicitors to please hang up and to remove the consumer's name from their calling list. Friends and relatives can skip this announcement by pressing 1. Additionally, those on the Privileged Caller List established by the consumer will not hear the announcement.	No Solicitation Service is approximately \$6.95 per month with a one-time installation fee of \$8.50.

\* Cost of services based on survey of phone service providers in the State of Colorado.



### Consumer Electronic Devices To Control Telemarketing

Device	Method of Operation	Cost to Consumer
Caller ID Devices	A consumer purchases a stand-alone Caller ID Device (avoiding the monthly charge for Caller ID Service). In addition to caller ID, the device may also provide the consumer with other features, such as call waiting, answering service and multiple-party conferencing.	Caller ID Devices range in price from a one-time cost of \$19.95 to \$199.95.
CallmeNot	The CallmeNot Device, which connects to the consumer's phone, automatically answers all phone calls with the message, "This number does not accept solicitation or survey calls of any kind. Place this number on your do-not-call list and hang up." Callers may press 1 to ring through to the consumer's home.	CallmeNot costs \$49.95.
Call Screener	In automatic mode, the device plays a message to all callers notifying telemarketers to remove the consumer's name from their list. Friends and family can press "1" to ring through to the consumer. In manual mode, all calls ring through; however, the consumer can press star, causing the caller to be transferred to a do not call message and terminating the call.	The cost of Call Screener ranges from \$34.97 to \$49.97.
Easy Hang-up or EZ Hang-up	This device, which connects to the phone, allows the consumer who answers the phone and identifies the caller as a telemarketer to press the button on the device, which plays a message stating, "I'm sorry, this number does not accept this type of call. Please regard this message as your notification to remove this number from your list. Thank you," and disconnects the caller.	The cost of Easy Hang-Up or EZ Hang-up ranges from \$12.95 to \$24.99.
Phone Butler	This device, which connects to phone, works like the EZ Hang-up. When the consumer presses the star key after identifying the caller as a telemarketer, the device delivers a message requesting that the caller remove the consumer from its solicitation list and then terminates the connection.	The cost of Phone Butler is \$49.95.

<b>Device</b>	<b>Method of Operation</b>	<b>Cost to Consumer</b>
PreFone Filter	The PreFone Device, which connects to the phone and is compatible with an answering machine, answers incoming calls, identifies telemarketers and plays a pre-recorded message instructing the telemarketer to place the number on a no-call list, and prevents telemarketers' calls from ringing in the consumer's home. Permitted callers ring through to the consumer's phone.	The PreFone Filter costs \$119.95 plus \$9.95 shipping and handling.
Talking Caller ID	This shareware program identifies who is calling before the phone is picked up, informs the consumer, and can send a message to the telemarketers' computer instructing them to remove the consumer's number from the calling list. The program also offers features such as caller ID, a caller database, and the ability to send caller information to a pager, e-mail or cellular phone.	In addition to monthly costs of Caller ID Service that is necessary for the device to work, the license for the program is \$39.95. For a total cost of \$69.95, the consumer will also receive unlimited lifetime upgrades of the software.
TeleZapper	The TeleZapper, which connects to the consumer's phone, emits a special tone when either the consumer or the consumer's answering machine answers that a predictive dialer interprets as a disconnected number causing the predictive dialer to hang up and place the consumer's number in a database of disconnected numbers. As the consumer's number is removed from more and more databases over time, the consumer will receive far fewer telemarketing calls.	TeleZapper costs \$49.99.
TriVOX	TriVOX, together with the consumer's telephone answering device, answers the phone and greet callers with the consumer's answering machine message. Selected callers can bypass the message and ring through to the consumer by entering a secret code.	The cost of TriVOX ranges from \$69.95 to \$99.95

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## **ANALYSIS OF FCC TCPA COMPLAINTS**

This exhibit presents a preliminary analysis of informal complaints ATA has obtained from the FCC pursuant to a FOIA request. The FCC has produced only 465, or about four percent, of the approximately 12,500 complaints and inquiries referred to in the NPRM. ATA's analysis of the documents thus far reveals that thirty-four percent complain about violations of do not call requests; nineteen percent complain about artificial or prerecorded messages and/or ATDS; less than one percent complain about predictive dialers; one percent complain about violations of time of day restrictions; seventeen percent fall into the TCPA general solicitation category; and over twenty-eight percent concern "junk facsimiles.

### **Background**

In response to the statement in the Notice of Proposed Rulemaking in Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, 17 FCC Rcd 17459 (2002) ("NPRM"), that the FCC received over 11,000 complaints about telemarketing practices, and over 1,500 inquiring about predictive dialing, ATA sought to obtain the documents in order analyze them. ATA submitted a request under the Freedom of Information Act ("FOIA"), as directed by the Consumer and Governmental Affairs Bureau ("CGB"). In response, ATA was told that it would take the Commission six to eight months to provide the requested documents due to the need to redact personally identifiable information from the complaints before ATA could receive them. ATA was also informed that it would cost between \$23,000 and \$26,000 to obtain the documents.

ATA sought an extension of time to comment on the NPRM (which was partially granted) until it could review the complaints and inquiries, and it has filed an appeal of the CGB's decision on ATA's FOIA request. In the interim, CGB provided a sample of complaints received in the two months specified by ATA, August 2001 and March 2002 (a total of 277 documents). An additional 188 redacted documents were made available on November 29, 2002. Thus, for purposes of these initial comments, ATA was able to analyze 465 TCPA-related complaints provided by the Commission, constituting slightly less than four percent of the total complaints the Commission has received since January 2000. The Bureau stated that these documents are a random but representative sample of the total complaints the Commission has received from consumers. The results of ATAs analysis are as follows.

### **Analysis**

ATA reviewed the complaints according to classifications established by the Commission. The FCC set forth five categories in its quarterly reports into which it places complaints or inquiries regarding compliance with the TCPA. See, e.g., Report on *Informal* Consumer Inquiries and Complaints, 2nd Quarter Calendar Year 2002 (CGB Oct. 15,2002). They are:

- Artificial or Prerecorded Message and/or ATDS. This category includes complaints or inquiries about "calls to a residence using an artificial or prerecorded voice to deliver a message."
- Do Not Call List Request Not Honored. This category includes complaints and inquiries about telephone solicitations to residential telephone subscribers.
- Fax Complaint. This category involves complaints or inquiries regarding "unsolicited ('junk') faxes or the use of a computer or other device to send any message via telephone facsimile."
- TCPA General Solicitations. This category involves disputes or inquiries "about the initiation of a call or message for the purpose of encouraging the purchase or rental of, or investment in property, goods, or services."
- Time of Day Violation. This category involves complaints or inquiries regarding "telephone solicitation to a residential telephone subscriber before 8 a.m. [or] after 9 p.m."

Additionally, a sixth category not mentioned in the quarterly reports but noted in the NPRM relates to complaints about predictive dialing.

ATAs review of the complaints it has received from the Commission reveals that 160 of the 465 complaints or inquiries that ATA has received fit into the Commission's "do-not-call" category. This means that only thirty-four percent of the documents in the representative sample that ATA has received from the Commission complain about "do-not-call" requests that companies have allegedly violated in some manner. Of the "do-not call" complaints, 114 of these documents, or over seventy percent, involve complaints about calls from telephone service providers.

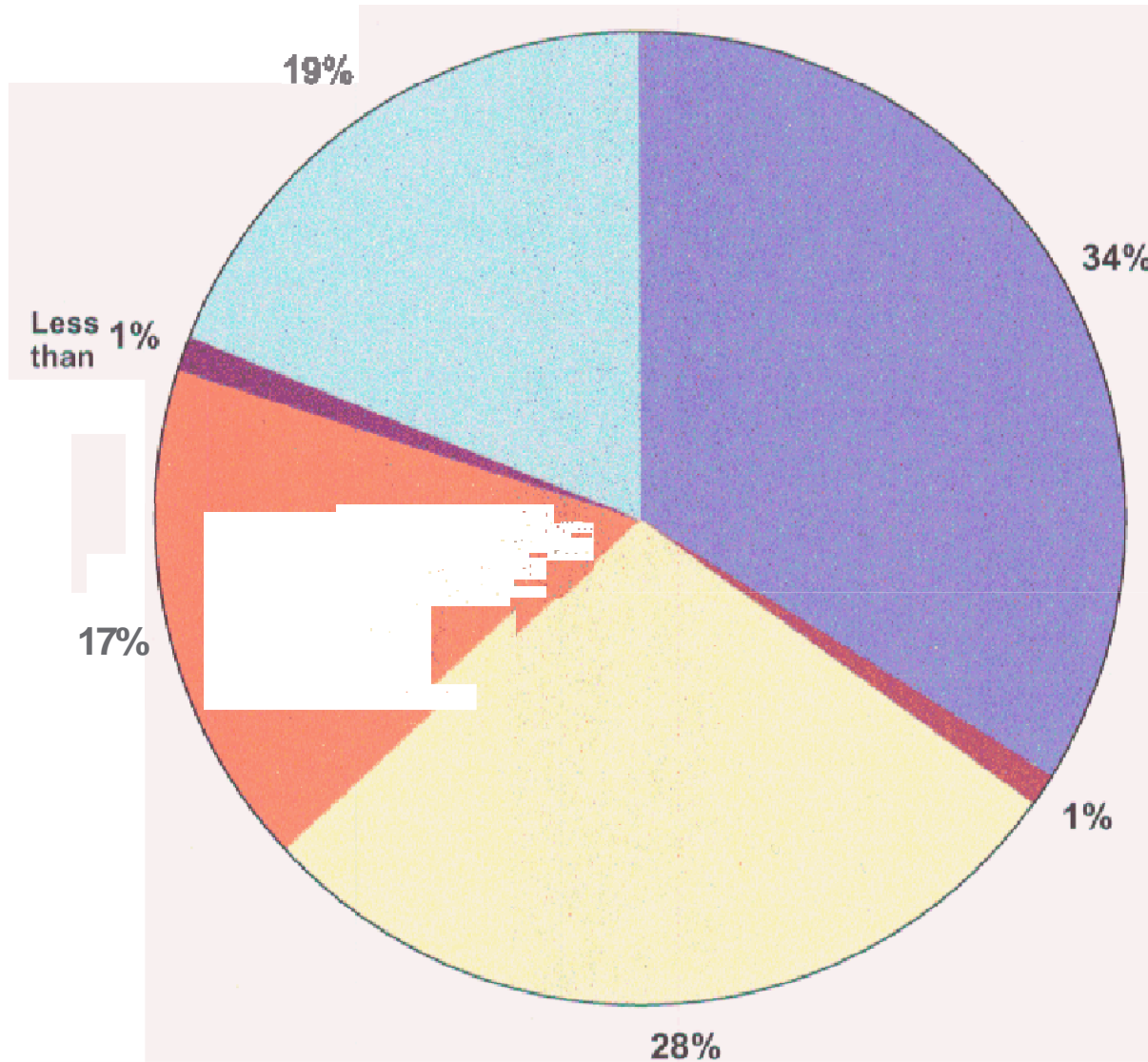
Additionally ATA found that nineteen percent of the documents, or 87 inquiries or complaints out of a total of 465, fall into the artificial or prerecorded messages and/or ATDS category. Less than one percent of the complaints or inquiries that ATA has received, or 1 out of 465 documents, fall into the previously undisclosed category the Commission has labeled "Predictive Dialing." Similarly, approximately one percent of the complaints, or 5 out of 465 complaints or inquiries, concern alleged violations of time of day restrictions. Nearly seventeen percent, fall into the TCPA General Solicitation category. Over twenty-eight percent, or 131 out of 465 complaints or inquiries, concern "junk facsimiles.

These data are presented visually in the graphs below.



## FCC TELEMARKETING COMPLAINTS

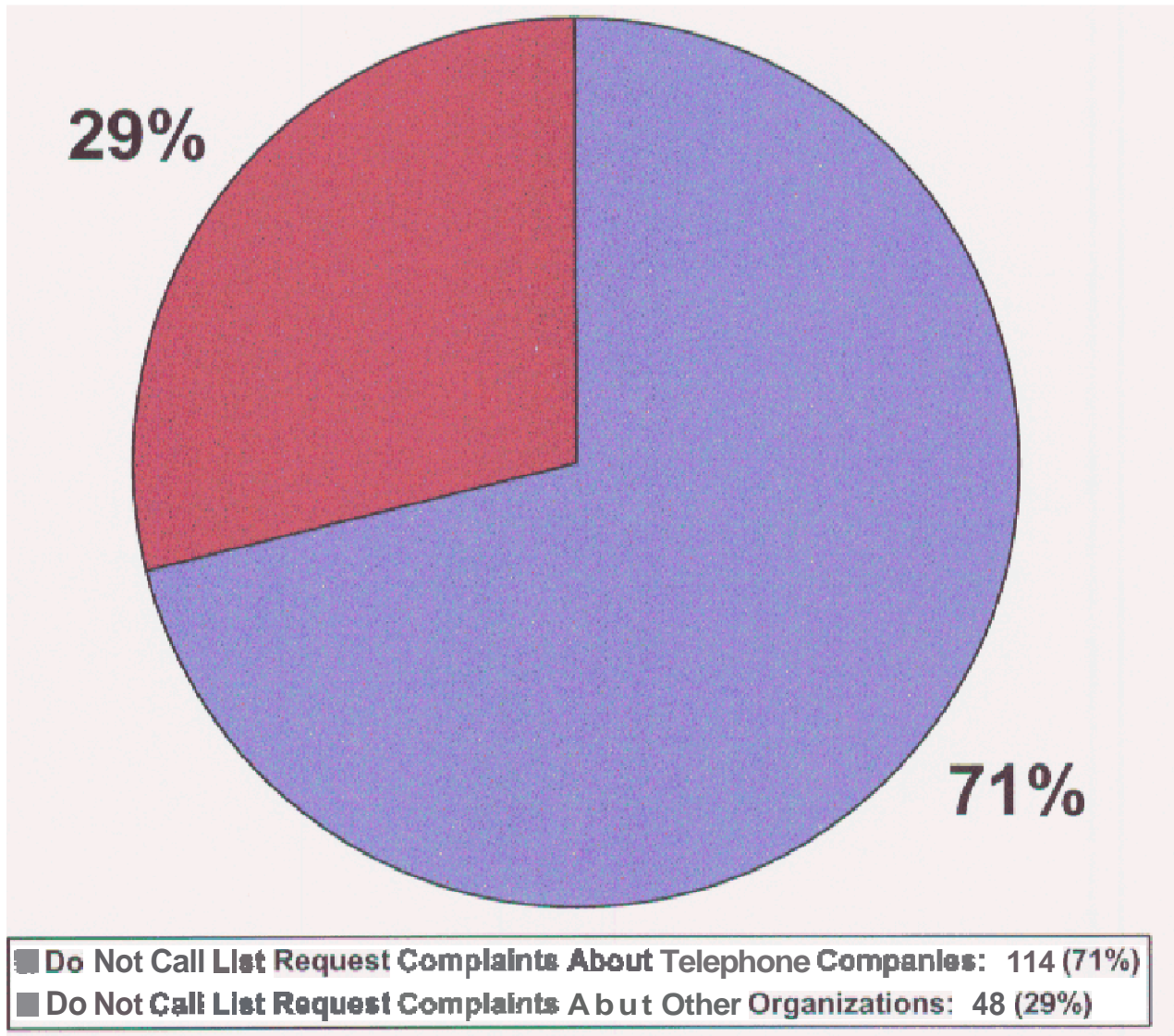
[Total Complaints: 465]



■ Do Not Call List Complaint: 160 (34%)
■ Time of Day Violation: 5 (1%)
■ Fax Complaint: 131 (28%)
■ TCPA General Complaint: 81 (17%)
■ Predictive Dialing: 1 (0.2%)
■ Artificial or Prerecorded Message and/or ATDS: 87 (19%)

## DO NOT CALL COMPLAINTS ABOUT TELEPHONE COMPANIES

[Total Complaints: 160]





**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rules and Regulations Implementing	)	CG Docket No. 02-278
the Telephone Consumer Protection	)	
Act of 1991	)	
	)	

**COMMENTS OF THE AMERICAN TELESERVICES ASSOCIATION**

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**AFFIDAVIT OF STUART DISCOUNT**

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I, STUART DISCOUNT, do hereby attest as follows:

1. I am over 18 years of age and am competent to provide this Affidavit. The statements contained in this Affidavit are based on my personal knowledge.
2. I reside at 475 Summerhill Court, Yardley, Pennsylvania 19607.
3. I have a Bachelor of Science Degree in Accounting from Temple University and have been employed in the teleservices industry since 1977. I am currently the president of Tele-Response Center, Inc., a firm that specializes in using telemarketing to fundraise for not-for-profit organizations.

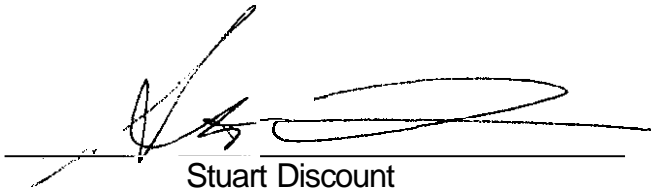
4. Tele-Response Center currently operates three call centers in two states and eighty-percent of our business is derived from fundraising efforts for not-for-profit organizations. Our business employ nearly five hundred people, over 70 percent of whom are women. Over thirty percent of our employees are also single or married working mothers.

5. We fully comply with all laws and regulations governing telemarketing. Our Director of Compliance oversees all of our compliance issues, including determining the applicability of the various exemptions for telemarketing performed by not-for-profit entities, satisfying the various states' charitable registration requirements, and purchasing and scrubbing all do-not-call lists. Additionally, we maintain do-not-call lists for clients who are not legally obligated to maintain such lists, but wish to do so voluntarily as a good business practice. Furthermore, we monitor the calls placed by our agents to ensure that they adhere to the scripts devised specifically to comply with the laws operative in the jurisdiction in which the recipient of a call resides.

6. A national do-not-call list will prove disastrous for our business. The current company-specific do-not-call regimes already require a substantial investment of time and effort. Much of our agents' time is now spent unproductively because they must continually explain to recipients of calls why our not-for-profit clients are not obligated to maintain company-specific do-not-call lists. Consequently, our agents spend less time raising funds for the causes of our not-for-profit clients. However, a national do-not-call regime will exacerbate this problem and engender an even worse one.

7. The company-specific do-not-call approach at least gives telephone users a broader range of choices than will a national all-or-nothing approach. For instance, many of our not-for-profit clients ~~who~~ voluntarily maintain ~~do-not-call~~ lists give recipients of ~~calls~~ the choice of being called only once a year, in lieu of being placed on a do-not-call list. Many consumers consent to such annual calls rather than impose a total block on calls. For many telemarketers, a national do-not-call regime will reduce these types of options by forcing consumers to make a single all-or-nothing decision.


Dated: 12.06.02  
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Stuart Discount

STATE OF PENNSYLVANIA )  
COUNTY OF PENNA ) ss  
PHILA

Subscribed and sworn to before me this 6<sup>th</sup> day of December, 2002

My commrsson expires: 11/29/03

  
Notary Public  
1242 N. 64<sup>th</sup> ST.  
PHILA., PA 19151  
Address

Notarial Seal  
Basia Banks, Notary Public  
Philadelphia, Philadelphia County  
My Commission Expires Nov. 29, 2003